

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

<i>In re</i> Boy Scouts of America and Delaware BSA, LLC, ¹ Debtors.	Chapter 11 Bankruptcy Case No. 20-10343 (LSS) (Jointly Administered)
National Union Fire Insurance Co. of Pittsburgh, PA, <i>et al.</i> , Appellants. v. Boy Scouts of America and Delaware BSA, LLC, Appellees.	Case No. 22-cv-01237-UNA
Travelers Casualty and Surety Company, Inc. <i>et al.</i> , Appellants. v. Boy Scouts of America and Delaware BSA, LLC, Appellees.	Case No. 22-cv-01238-UNA
Old Republic Insurance Company, Appellant. v. Boy Scouts of America and Delaware BSA, LLC, Appellees.	Case No. 22-cv-01239-UNA

¹ The Debtors in the chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Boy Scouts of America (6300); and Delaware BSA, LLC (4311). The Debtors' mailing address is 1325 West Walnut Hill Lane, Irving, Texas 75038.

General Star Indemnity Company,
Appellant.

v.

Boy Scouts of America and Delaware BSA, LLC,
Appellees.

Case No. 22-cv-01240-UNA

Indian Harbor Insurance Company,
Appellant.

v.

Boy Scouts of America and Delaware BSA, LLC,
Appellees.

Case No. 22-cv-01241-UNA

Munich Reinsurance America, Inc.,
Appellant.

v.

Boy Scouts of America and Delaware BSA, LLC,
Appellees.

Case No. 22-cv-01242-UNA

Arch Insurance Company,
Appellant.

v.

Boy Scouts of America and Delaware BSA, LLC,
Appellees.

Case No. 22-cv-01243-UNA

Great American Assurance Company *et al.*,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01244-UNA

The Continental Insurance Co., *et al.*,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01245-UNA

Gemini Insurance Company,

Appellant.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01246-UNA

Traders and Pacific Insurance Company *et al.*,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01247-UNA

D & V Claimants,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01249-UNA

Argonaut Insurance Company *et al.*,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01250-UNA

Arrowood Indemnity Company,

Appellant.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01251-UNA

Liberty Mutual Insurance Company *et al.*,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01252-UNA

The Archbishop of Agaña,

Appellant.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01254-UNA

The Lujan Claimants,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01258-UNA

Allianz Global Risks US Insurance Company *et al.*,

Appellants.

v.

Boy Scouts of America and Delaware BSA, LLC,

Appellees.

Case No. 22-cv-01263-UNA

**JOINT MOTION FOR CONSOLIDATION AND TO APPROVE STIPULATION
REGARDING APPEALS FROM ORDER CONFIRMING PLAN OF
REORGANIZATION OF BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC**

Boy Scouts of America and Delaware BSA, LLC (together, the “Debtors”) and the Certain Insurers,² the claimants represented by Dumas & Vaughn, LLC, and the Archbishop of Agaña, a

² The Certain Insurers are Allianz Global Risks US Insurance Company, National Surety Corporation, Interstate Fire & Casualty Company, Argonaut Insurance Company, Colony Insurance Company, Liberty Mutual Insurance Company, General Star Indemnity Company, Great American Assurance Company f/k/a Agricultural Insurance Company, Great American E&S Insurance Company f/k/a Agricultural Excess and Surplus Insurance Company, Great American E&S Insurance Company, Arch Insurance Company, Continental Insurance Company, Columbia Casualty Company, Indian Harbor Insurance Company on behalf of itself and as successor in interest to Catlin

Corporation Sole, and other parties in interest that have sought review of the Confirmation Order (as defined below) by this Court (collectively, the “Appellants”³ and, together with the Debtors and the Additional Appellees,⁴ the “Parties”)⁵ hereby move this Court for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), procedurally consolidating the appeals, approving the *Stipulation Regarding Appeals from Order Confirming Plan of Reorganization of Boy Scouts of America and Delaware BSA, LLC*, attached to the Proposed Order as Exhibit 1 (the “Stipulation”) and setting a date for oral argument, and state as follows:

BACKGROUND

1. On July 29, 2022, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered and docketed its opinion in connection with confirmation of the Debtors’ plan of reorganization [Bankruptcy D.I. 10136] (the “Opinion”). On September 8, 2022, the Bankruptcy Court docketed and entered its Supplemental Findings of Fact and Conclusions of

Specialty Insurance Company, Travelers Casualty and Surety Company, Inc. (f/k/a Aetna Casualty & Surety Company), St. Paul Surplus Lines Insurance Company, Gulf Insurance Company, Arrowood Indemnity Company, Gemini Insurance Company, Munich Reinsurance America, Inc., formerly known as American Re-Insurance Company, Traders and Pacific Insurance Company, Endurance American Specialty Insurance Company, Endurance American Insurance Company, Old Republic Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, Lexington Insurance Company, Landmark Insurance Company, and The Insurance Company of the State of Pennsylvania. Markel Service, Incorporated, Claims Service Manager for Alterra Excess & Surplus and Evanston Insurance Company, was included as a Certain Insurer in the Bankruptcy Court proceedings but has not filed a notice of appeal.

³ The undersigned Appellants have reached agreement with the Debtors and do not purport to speak for or have authority to act on behalf of other potential parties in interest.

⁴ The Tort Claimants’ Committee, the Coalition, the Future Claimants’ Representative, Pfau/Zalkin, Hartford, Century and Chubb Companies, Zurich Insurers and Zurich Affiliated Insurers, Clarendon, the Creditors’ Committee, the Ad Hoc Committee, JPM, and the United Methodist ad hoc committee (collectively, the “Additional Appellees”) have played active roles in the Chapter 11 Cases, including filing pleadings and statements in support of the Plan and the Confirmation Order and participating at the Confirmation Hearing and may wish to file briefs in support of the Plan and the Confirmation Order in the Appeals.

⁵ The Lujan Claimants are a party and signatory to the terms of the Stipulation, but did not authorize the Debtors to sign this Motion on their behalf due to last-minute comments to this Motion from counsel to the Lujan Claimants that were not included in the Motion.

Law and Order Confirming the Third Modified Fifth Amended Chapter 11 Plan of Reorganization (with Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC [Bankruptcy D.I. 10316] (the “Confirmation Order”), confirming the Third Modified Fifth Amended Chapter 11 Plan of Reorganization (with Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC [Bankruptcy D.I. 10296] (the “Plan”).⁶ On September 12, 2022, the Bankruptcy Court docketed and entered its Order Releasing Pre-Petition Century/Chubb Claims Pursuant to Century and Chubb Companies Insurance Settlement Agreement [Bankruptcy D.I. 10327] (“the “Century/Chubb Order”).

2. On September 21 and 22, 2022, the Appellants filed notices of appeal of the Confirmation Order, the Opinion, the Century/Chubb Order, and all other subsumed judgments, orders, and decrees (collectively, the “Appeals”).

3. After weeks of mediation, the Parties reached an agreement on the procedure for this Court’s consideration of the Appeals that the Parties believe provides for an orderly, efficient, and timely review process, which is set forth in the Stipulation.

RELIEF REQUESTED

4. The Parties seek this Court’s approval of the Stipulation to establish the procedures for the Appeals.

A. Consolidation

5. The Parties seek to procedurally consolidate the Appeals and any other appeals of the Opinion and the Confirmation Order pursuant to Rule 8003(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) under a single case number: Case No. 22-cv-

⁶ Capitalized terms that are used but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

01237. The Parties have agreed, subject to Court approval, to file papers under the master case number, with filings peculiar to any individual appeal to be docketed under both the master case number and the individual appeal case number. The Parties request that the appeal styled as *D.W. v. Boy Scouts of America & Delaware BSA, LLC*, C.A. No. 22-1121-RGA, and any additional appeals of the Opinion and the Confirmation Order in the matter of *In re Boy Scouts of America and Delaware BSA, LLC*, automatically be subject to the Proposed Order.⁷

B. Effective Date of the Plan

6. An order of this Court on appeal under certain circumstances has been defined to constitute an “Affirmation Order” under the terms set forth in the Confirmation Order and the Plan. *See* Confirmation Order ¶ II.K.2. Absent waiver, entry of an Affirmation Order is a condition precedent to the Effective Date of the Plan.

7. The Debtors have agreed not to waive the condition precedent to the Effective Date of the Plan set forth in Article IX.B.1(a) of the Plan prior to entry of this Court’s decision and order on the Appeals, without providing 28 days’ prior notice to the Appellants through email to their undersigned counsel. Entry of an Affirmation Order satisfies the condition precedent to the Effective Date of the Plan set forth in Article IX.B.1(a) of the Plan such that waiver is no longer required. Stipulation ¶ 2.

C. Waiver of Mediation

8. On June 9, 2020, the Bankruptcy Court appointed mediators in the Debtors’ Chapter 11 Cases for the purpose of mediating various issues, including issues concerning the confirmation of a chapter 11 plan. Thus, the Debtors have engaged in discussions with the

⁷ The Debtors are also in the process of reaching out to D.W. as of the date hereof to request that he join the Stipulation.

Appellants in connection with the Plan, including through regular formal mediation discussions over the course of nearly two years, but the objections could not be resolved. The Parties agree that a further formal mediation under the Court's July 23, 2004 Standing Order and September 11, 2012 Standing Order, referring appeals from the Bankruptcy Court to mediation, will not succeed and will only delay the case.

9. As set forth in the Stipulation, the Parties request that these matters be withdrawn from the mandatory referral for mediation and immediately proceed through the appellate process of this Court. Stipulation ¶ I.

D. Designation of the Record

10. Each Appellant has agreed to file a Designation of Record and a Statement of Issues on the issues to be presented in their appeal within 10 days after the last date on which an Appellant filed its notice of appeal, rather than the 14 days provided under Bankruptcy Rule 8009. The Debtors and Additional Appellees have agreed to file Counter-Designations of Record within 3 days of the filing of the Appellants' Designation of Record, rather than the 14 days provided under Bankruptcy Rule 8009. The Parties have agreed to cooperate to facilitate the expeditious transmittal by the bankruptcy clerk to this Court of the record or notice that the record is available electronically. Stipulation ¶ 5.

E. Appellees/Intervenors

11. The Parties have agreed, subject to Court approval, that the Additional Appellees are permitted, but are not required, to intervene in the Appeals without having to file a motion pursuant to Bankruptcy Rule 8013. To the extent that the applicable rules require intervention by any of the Additional Appellees, the Parties request that the Additional Appellees be allowed to

intervene. All Parties' rights to challenge standing are preserved and are not affected by the Stipulation. Stipulation ¶ 8.

F. Briefing Timeline and Word Limitations

12. The Appellees wanted expedited briefing on this appeal, and the Appellants wanted more time than provided for under Bankruptcy Rule 8018(a). Ultimately, the Parties agreed, subject to Court approval, to submit briefing on the timeline set forth in Bankruptcy Rule 8018(a), which is for the Appellants to file their opening briefs within 30 days of when the record is available, for Appellees to file response briefs within 30 days of the opening briefs, and for Appellants to file reply briefs within 14 days of the response briefs. Stipulation ¶ 9.

13. The Parties and Additional Appellees also agreed to endeavor to avoid duplicative briefing on appellate issues and to act in good faith to streamline briefing to the extent feasible. As of the date of this Motion, there are a total of 19 appeals arising from the Confirmation Order. If each Appellant were to file separate 13,000 word principal briefs, as provided in Bankruptcy Rule 8015(a)(7)(B) for each appeal, over 247,000 words of briefing would be presented to this Court. Instead, the Appellants request word limits that, while exceeding the default word limit requirements in certain instances, nonetheless will promote judicial economy by consolidating briefing and avoiding duplication. The Debtors agreed to such limitations with the understanding that they will receive additional words in length equal to the limits for each principal brief or supplemental brief filed by appellants.

14. The Parties and Additional Appellees will comply with Bankruptcy Rules 8014 and 8015, but request that the Court approve the following word limitations with respect to briefing of the Appeals:

(a) Each Appellant, other than the Certain Insurers, shall file its principal brief or briefs in respect of its Appeal, each of which, may be up to 19,500 words in length, within thirty (30) days from the filing of the Counter-Designation(s) of Record. The Certain Insurers may file (i) one principal brief of up to 19,500 words; and (ii) supplemental briefs not to exceed 13,000 words in total, each within thirty (30) days from the filing of the Counter-Designation(s) of Record. Stipulation ¶ 9(b).

(b) The Debtors shall file a single, consolidated brief in response to all of the Appellants' principal briefs within thirty (30) days following the filing of the Appellants' principal briefs, and the total number of words in such consolidated response may be up to 19,500 words in response to the Certain Insurers' principal brief and additional words in length equal to the limits for each other principal brief or supplemental brief filed (*e.g.*, to the extent that there are two other principal briefs filed by Appellants other than the Certain Insurers, the Debtors' consolidated brief in response may be up to 19,500 words plus an additional 39,000 words). Stipulation ¶ 9(c).

(c) Any response brief filed by any of the Additional Appellees may be up to 13,000 words in length per brief submitted by such Additional Appellee, and shall be filed within thirty (30) days following the filing of the Appellants' principal briefs. Stipulation ¶ 9(d).

(d) Each Appellant that has filed a principal or supplemental brief may file a brief in reply to all response briefs within fourteen (14) days following the filing of such response briefs. The Certain Insurers may file (i) one principal reply brief, up to 10,000 words in length, plus an additional 10,000 words for each response brief filed by Additional Appellees, and (ii) additional supplemental reply brief(s), up to 6,500 words in length, plus an additional 6,500 words for each response brief filed by Additional Appellees. Each Appellant, other than the Certain

Insurers, may file a reply brief, up to 10,000 words in length, plus an additional 10,000 words for each response brief filed by Additional Appellees. Stipulation ¶ 9(e).

G. Oral Argument

15. The Parties respectfully request that the Court schedule oral argument as soon as practicable after the briefing is complete, which should be approximately on December 21.

CONCLUSION

WHEREFORE, the Parties respectfully request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, or as may be modified by the Court.

Dated: September 27, 2022

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LOCAL RULE 7.1.1 CERTIFICATION

Pursuant to D. Del. L.R. 7.1.1, the undersigned hereby certifies that the counsel for the Debtors/Appellees have met and conferred with the Appellants and Additional Appellees (each as defined in the Stipulation) and reached agreement on the matters set forth in this Motion and the Appellants, Appellees, and Additional Appellees do not oppose this Motion.

Dated: September 27, 2022

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bankr. P. 8015(h), the undersigned hereby certifies that this motion complies with the type-volume limitation of Fed. R. Bankr. P. 8013(f)(3)(A). Exclusive of the exempted portions specified in Fed. R. Bankr. P. 8015(g), the motion contains 2,091 words. The motion has been prepared using Microsoft Word. The undersigned has relied upon the word count feature of this word processing software in preparing this certificate.

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